

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

In re

ROBERT N. LUPO,

Debtor

CHAPTER 11

CASE NO. 09-21945-WCH

**REPORT OF EXAMINER**

Mark G. DeGiacomo, the duly appointed Examiner of the above captioned bankruptcy estate (the “Examiner”) hereby submits the following report:<sup>1</sup>

**I. Introduction**

On December 10, 2009, Robert N. Lupo (the “Debtor”) filed a voluntary petition pursuant to Chapter 11 (the “Petition Date”). Since the Petition Date the Debtor has operated as a Debtor-in-Possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. On June 29, 2010, this Court entered an Order requiring that the Office of the United States Trustee appoint an examiner to report as soon as possible concerning matters referenced in Section 1106(a)(3) and (4) of the Bankruptcy Code. Section 1106(a)(3) and (4) require an examiner to:

“(3) . . . investigate the acts, conduct, assets, liabilities and financial condition of the debtor, the operation of the debtor’s business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formation of a plan. . . and

(4)(a) file a statement of any investigation conducted under paragraph (3) of this subsection including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor, or to a cause of action available to the estate”.

<sup>1</sup> After consultation with the Office of the United States Trustee, the Examiner has endeavored to draft and submit this Report prior to the hearings scheduled before this Court on August 18, 2010. While the Examiner has attempted to include his findings on all of the matters referenced in 11 U.S.C. § 1106(a)(3) and (4), he stands ready to continue his investigation and supplement this Report concerning any issues the Court may want investigated.

## **II. The Investigation**

In connection with his investigation of the Debtor, the Examiner conducted lengthy interviews of the Debtor on July 14, 2010 and August 11, 2010, conducted a lengthy interview of Lisa Jacobs on July 7, 2010, conducted a site visit on August 9, 2010 of several of the Debtor's real properties, inspected several of the Debtor's more valuable motor vehicles, reviewed hundreds of pages of pleadings and documents filed in this case and in other cases that were filed in various State Courts, had telephone calls with several city and town officials concerning the Debtor's real estate holdings, met with and had telephone calls with several of the Debtor's tenants, reviewed documents at several Registries of Deeds, the Registry of Motor Vehicles, the Office of the Massachusetts Secretary of State and the Office of the Massachusetts Attorney General, reviewed real estate appraisals, conducted fact research on the internet concerning several issues, had numerous telephone calls and e-mail exchanges with several attorneys who represent parties in this case and reviewed material provided by Verdolino & Lowey, the Debtor's accountants.

## **III. The Debtor**

As noted above, the Examiner conducted two lengthy interviews of the Debtor. The Examiner feels that the Debtor was very forthcoming during both of these interviews although he was very slow when it came to producing documents that were requested at the conclusion of the July 14, 2010 interview. The Examiner believes that it was only due to the efforts of Attorney Ruttenberg that the majority of the documents finally were turned over – weeks after they were requested. Attorney Ruttenberg has been extremely responsive to all of the many requests made by the Examiner throughout this investigation.

The Examiner feels that during the lengthy interviews he conducted with the Debtor, the Debtor answered all the Examiner's questions and appeared to do so in a candid and forthright

manner. The Examiner considered but rejected the idea of taking the Debtor's Rule 2004 Examination. It is the Examiner's view that since all parties in interest would likely be able to attend and question the Debtor at a Rule 2004 Examination such an examination had the potential of turning into a circus and not being nearly as helpful to the Examiner as were the private interviews.

The Debtor is 64 years old. In 1974, the Debtor became a member of the Massachusetts Bar and until September, 2006 he practiced law in Waltham, Massachusetts, first with his father's firm, Lupo & Lupo, and later as a sole practitioner. The Debtor's law practice primarily concentrated in the area of representation of parties in connection with residential real estate transactions. On July 28, 2006, the Supreme Judicial Court entered a Judgment pursuant to which the Debtor was indefinitely suspended from the practice of law (a copy of the Supreme Judicial Court decision is attached as Exhibit D to the Opposition of Rockland Trust Company to Second Motion by Debtor for Extension of Exclusivity (Doc. 176)). In general, the Supreme Judicial Court found that in connection with two separate incidents the Debtor engaged in "clear, personal conflicts of interest with elderly, unsophisticated and vulnerable clients" and that his "conduct reflects an insensitivity to his obligation of absolute fiduciary fidelity to those whom he counseled, combined with a pattern of self-dealing and self-enrichment at their expense". Although the Debtor is entitled to apply for readmission, he has yet to do so. The Debtor was represented by counsel during the underlying Board of Bar Overseers hearings and before the Supreme Judicial Court. The Debtor feels very strongly that an injustice was done to him by both the Board of Bar Overseers and the Supreme Judicial Court. The Examiner did not spend the time necessary to fully understand the basis for the Debtor's views on this subject.

In addition to his law practice, the Debtor began purchasing real estate in 1968. Since then he has bought, either personally or through a trust, thirty-three parcels of real estate (See

Section IV (A) of this Report for a full discussion of the Debtor's real estate). Although the Debtor is a buyer of real estate he is not necessarily a seller. The only real estate the Debtor has ever sold was his first home which he sold in 1983. As a result, on the Petition Date, the Debtor owned either directly or through a trust, a total of thirty two parcels of real estate, all but seven of which are properties he rents to residential tenants. The Debtor runs his real estate business from an office located at 721 Main Street in Waltham, Massachusetts, one of the three commercial buildings owned by the Debtor. The Examiner confirmed with the Office of Consumer Affairs & Business Regulation for the Commonwealth of Massachusetts, Division of Professional Licensure (the "Licensure Division"), that the Debtor became a licensed real estate broker on January 1, 1975, and that his license has not been suspended. According to the Licensure Division, no disciplinary actions have been taken concerning the Debtor's license since at least 1993 (the last date available on the Licensure Division's website).

In addition to his real estate business, the Debtor also is the owner and operator of The Piano Man, Inc. The Piano Man, Inc. ("Piano Man") is a Massachusetts corporation which was incorporated in 1993. Piano Man is in the business of buying, refurbishing and selling pianos (See Section IV(E) of this Report for a full discussion of the Piano Man).

#### **IV. Assets**

##### **A. Real Estate Holdings**

Schedule A of the Debtor's original schedules to his bankruptcy petition (the "Original Schedules") list the Debtor's interest in twenty three parcels of real estate (the "Debtor Owned Real Estate"). Although the Original Schedules were filed over a month after the Petition Date, the Debtor provides a dollar amount for the fair market value of the his interest in only five of these twenty three parcels. He lists the value of the other eighteen properties as "undetermined".

In response to Question 35 of Schedule B of the Debtor's bankruptcy petition, the Debtor lists his interest in seven real estate trusts, each of which the Debtor advised the Examiner owns one or more parcels of real estate. The Debtor listed "unknown" as the current value of his interests in all of these trusts. Seven months after the filing of the Original Schedules, the Debtor a licensed broker who has been in the business of purchasing and managing his real estate holdings for many years, still has not amended his Original Schedules to provide a fair market value of the real estate listed on Schedule A or the fair market values of his interests in the trusts which are disclosed in Schedule B.

**i. Debtor Owned Real Estate**

The twenty three parcels of real estate, title to which stand in the Debtor's name, are comprised of the Debtor's home located at 89 Sudbury Road in Weston, Massachusetts (owned as tenants by the entirety with his wife), a vacation home located at Winaukee Extension, Moultonboro, New Hampshire (owned solely by the Debtor), a single family house located at 221 Tower Road in Lincoln, Massachusetts which until recently was occupied by one of the Debtor's daughters and her husband (owned as tenants by the entirety with his wife), a single family home the Debtor bought for one of his daughters while she attended college located at 9 Sky Harbor Drive in Biddeford, Maine (owned as tenants by the entirety with his wife), a single family house located at 402 Parker Street, Newton, Massachusetts (owned as a joint tenant with Peter Collins), four additional single family houses, five four family houses, three two family houses, five residential condominiums and three commercial buildings.

The Examiner did not deem it necessary to incur the expense of hiring an appraiser to conduct appraisals of all of the Debtor's properties. The Examiner has however reviewed several existing appraisals as well as the tax assessments for all of the properties. The Examiner has also discussed the value of each property with the Debtor. Based on these efforts the

Examiner believes that the Debtor has equity, over and above mortgages and the Debtor's homestead, in as many as nineteen of the twenty three Debtor owned properties totaling approximately \$3 million.<sup>2</sup>

Approximately twenty three of the currently occupied forty housing units owned by the Debtor are occupied by so-called Section 8 tenants under the supervision of various town housing authorities. The Debtor has advised the Examiner that he often times prefers to rent to Section 8 tenants because although their rent is set below fair market rental value, a significant portion of the rent is paid by the housing authorities and therefore all but guaranteed. The Debtor has indicated that the "guarantee" of rent is a sufficient trade-off for the lower amount of rent he would receive from Section 8 tenants.

## **ii. Real Estate Trusts**

In response to Question 35 on Schedule B of the Debtor's Original Schedules, the Debtor disclosed his interest in seven real estate trusts. Two months later, when he filed his Amended Schedules, the Debtor added an eighth trust, the Mashpee Realty Trust. The Debtor was the settler of six of these eight trusts (the "Family Trusts").<sup>3</sup>

Four of the Family Trusts are revocable by the Debtor (the "Revocable Trusts"). The Revocable Trusts are: the RN Lupo Family Trust (owner of 700 Boston Post Road, Weston, Massachusetts), the Linwood Family Trust (owner of 236 Linwood Avenue, Newton,

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<sup>2</sup> Given the number of properties involved, the fact that interest on the many over secured loans continues to accrue, and the changing market, the Examiner's estimate of combined fair market value could be off by several hundred thousand dollars either way. However, since even at the most conservative estimates the equity in the Debtor's assets far exceeds the maximum amount of claims that could be allowed in this case, the Examiner determined not to request the employment of an appraiser to help determine with more precision the amount of equity in each property.

<sup>3</sup> These trusts do not include the following trusts which the Debtor revoked on the Petition Date, each of which owned one parcel of real estate: the 22 Felton Street Realty Trust, the 91 Felton Street Realty Trust and the 721 Main Street Realty Trust (the "Revoked Trusts"). The real estate previously owned by the Revoked Trusts is listed on Schedule A to the Debtor's bankruptcy petition.

Massachusetts), the 25 Melville Avenue Family Trust (owner of 25 Melville Avenue, Newton, Massachusetts) and the Tower Realty Trust (owner of 131 Tower Road, Lincoln, Massachusetts). The real estate owned by each of the Revocable Trusts constitutes property of the bankruptcy estate In re Beatrice, 296 B.R. 576 (B.A.P. 1<sup>st</sup> Cir. 2003). The Examiner estimates that there is approximately \$500,000.00 in equity in the real estate owned by the Revocable Trusts.<sup>4</sup>

The four remaining Family Trusts each require a detailed explanation:

- A. Lupo Edgewater Realty Trust. This trust owns the real estate located at 10 Edgewater Park, Newton, Massachusetts. The assessed value for this real estate is \$359,100.00. This real estate is not encumbered by any liens or mortgages. The trustees are the Debtor and Ken Lopez. The Debtor is a 50% beneficiary of this trust and the M. Adeline Lupo Revocable Trust, which contains a spendthrift provision, holds the other 50% beneficial interest. The declaration of trust provides that the trust maybe amended with the consent of the trustees and beneficiaries and it may be terminated on the request of any beneficiary.
- B. N&A Realty Trust. This trust owns the parcels of real estate located at 97 Hamilton Road, Waltham, Massachusetts and 29 Myles Standish Road, Weston, Massachusetts. The combined assessed values of these properties is \$1,423,400.00. These parcels of real estate are not encumbered by any liens or mortgages. This trust contains a spendthrift provision. The trustees of this trust are the Debtor and Ken Lopez. The beneficiary of this trust is the M. Adeline Lupo Revocable Trust which has a spendthrift provision (see below). Both parcels of real estate are unencumbered. The declaration of trust

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<sup>4</sup> See footnote 2.

provides that the trust may be amended by a majority of the trustees and it may be terminated by any beneficiary.

- C. Mashpee Realty Trust. This trust owns unimproved lots known as 28 and 33 Nehoiden Road, Mashpee, Massachusetts. The lots have a combined assessed value of \$424,000. Neither of these lots are encumbered by liens or mortgages. The Debtor is the trustee of this trust. The beneficiary of this trust is the M. Adeline Lupo Revocable Trust. The declaration of trust provides that the trust may be amended with the consent of the beneficiaries and the trustee and it may be terminated by any beneficiary.
- D. M. Adeline Lupo Revocable Trust. The settler of this trust was the Debtor's mother. The Debtor is now the sole trustee. The trust holds 50% of the beneficial interest in the Lupo Edgewater Realty Trust and 100% of the beneficial interest in the N&A Realty Trust. The Debtor is the sole trustee of this trust. The beneficiaries of this trust are two subtrusts created by it. The Debtor is the beneficiary of one of these subtrusts and his sister is the beneficiary of the other subtrust. The declaration of trust includes a spendthrift provision.

The Debtor advised the Examiner that to the best of his memory no distributions have ever been made to any of the beneficiaries of any of the Family Trusts. As detailed below and as detailed on Exhibit A, each of the Family Trusts owns at least one parcel of real estate which is currently being leased with the exception of the Mashpee Realty Trust which owns two vacant lots and the M. Adeline Lupo Revocable Trust which owns no real estate. Prior to the Petition Date, all income from the Family Trusts with the exception of the income from the Lupo Edgewater Realty Trust, was deposited in the Debtor's operating account at RTN Bank along



with all income received from the Debtor Owned Real Estate. All expenses for the Family Trusts and the Debtor Owned Real Estate, again with the exception of the Edgewater Realty Trust, were paid from the operating account at RTN Bank.

### **iii. Cash Flow**

The Examiner has attached hereto as Exhibit A a chart prepared by the Debtor's accountants, Verdolino & Lowey, indicating among other things the estimated monthly expenses for each income producing property based on the expenses incurred during the first three months of the bankruptcy, the net income before debt service and the amount of the debt service plus real estate taxes which would be due currently pursuant to the terms of the promissory notes which are secured by the mortgages on each of the Debtor's income producing properties. The chart also lists the estimated tax basis which in some cases is quite low indicating that if these properties were sold a substantial capital gains tax would be incurred thereby reducing the equity available to creditors.

While there is substantial value in the Debtor's real estate that far exceeds the claims filed against this bankruptcy estate, many of the properties have a negative cash flow even before any debt service or real estate taxes are paid and many more will have a negative cash flow even if real estate taxes and interest only is paid to the holders of secured claims against the particular properties.

## **B. Motor Vehicles**

### **i. The Originally Scheduled Vehicles**

Schedule B of the Debtor's Original Schedules disclosed his 100% interest in a total of eight motor vehicles (the "Originally Scheduled Vehicles"). Although the Debtor included on Schedule B his opinion of the fair market value of each vehicle, in each instance the value listed appears to be lower than even the conservative "trade in" value listed by Kelly Blue Book or

NADA (See attached Exhibit B). As indicated in Exhibit B, the combined fair market value of the Originally Scheduled Vehicles is approximately \$49,425.00, approximately \$24,100.00 more than the total of the amounts listed by the Debtor on Schedule B to his bankruptcy petition.

Based on his review of the titles for all of the Originally Scheduled Vehicles, the Examiner has determined that of the Originally Scheduled Vehicles only the 2003 Toyota MR2 is encumbered by to a lien (in the amount of approximately \$5,800 (see Claim No. 31)).

## **ii. The Undisclosed Vehicles**

After the United States Trustee was advised by a creditor that the Debtor actually owned more motor vehicles than he had scheduled, the Debtor filed an amended Schedule B on March 15, 2010, in which he added an additional seven vehicles (the “Undisclosed Vehicles”). The Undisclosed Vehicles are: a 1932 Chevrolet, a 1964 Studebaker Daytona, a 1965 Mustang, a 1982 BMW, a 1986 Vixen Motor Home, a 1984 Datsun, and a 1998 Ford Crown Victoria. Although the fair market values of the Undisclosed Vehicles can be easily determined by the use of various well known internet sites, the Debtor listed the value of six of the seven Undisclosed Vehicles as “unknown” and has not sought to further amended Schedule B to provide the values of the other six vehicles.

The Debtor claims that six of the seven Undisclosed Vehicles were not originally scheduled because he felt that these vehicles were owned by the Piano Man and not him individually<sup>5</sup>. In response to questioning by the Examiner the Debtor indicated that these six Undisclosed Vehicles, as well as the originally scheduled 1981 BMW, had been purchased at an auction in New Hampshire (the “NH Vehicles”). The Debtor indicated that he intended to use

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<sup>5</sup> The Debtor indicated that the 1998 Ford Crown Victoria was not originally scheduled because although it is titled in his name he felt it was his mother's. As discussed in Section IV(F) of this Report, this vehicle was sold post-petition by the Debtor without court approval.

the NH Vehicles in connection with marketing efforts for the Piano Man although he also indicated that he had never actually done so. He indicated that the total purchase price for the NH Vehicles was \$90,000.00, of which \$15,000.00 was paid by a check from the Debtor's bank account and \$76,799.69 was paid from the proceeds of a personal unsecured loan the Debtor had obtained from RTN Federal Credit Union (the "Undisclosed Auto Loan"). The Piano Man was not an obligor or a guarantor of the Undisclosed Auto Loan. The bills of sale for the NH Vehicles indicate that each of the NH Vehicles was "sold to" the Debtor.<sup>6</sup> The Debtor has provided the Examiner with copies of the Declaration Pages for his personal automobile insurance policies which indicate that the insured party for all of the NH Vehicles is the Debtor not the Piano Man. The only evidence presented to the Examiner in support of the Debtor's claim that the NH Vehicles belong to the Piano Man is a handwritten assignment of four of the seven NH Vehicles on Piano Man stationery (the "Alleged Assignment") (Attached hereto as Exhibit C is a copy of the Alleged Assignment). The Debtor advised the Examiner that although he added the NH Vehicles when he filed his amended Schedule B he still believes based on the Alleged Assignment, these vehicles belong to Piano Man.<sup>7</sup>

The Examiner has examined the titles for all of the Undisclosed Vehicles that are titled vehicles and reviewed the UCC filings at the Office of the Secretary of State for the Commonwealth of Massachusetts. As a result of a review of these records the Examiner has determined that none of the Undisclosed Vehicles are encumbered by any lien or security interest.

Based on the NADA Guides, the Examiner believes the combined fair market value of

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<sup>6</sup> The Debtor did not provide a bill of sale for the 1932 Chevy but he advised the Examiner that the bill of sale for that vehicle was also in his name.

<sup>7</sup> The Examiner notes that the Piano Man's stationery on which the June 13, 2002 Alleged Assignment is written is very different from the Piano Man stationery that was used for a letter dated February 27, 2002, and two letters which appear to have been written to insurance companies shortly after the purchase of the NH Vehicles

the Undisclosed Vehicles is \$80,311.000.

### **iii. Other Vehicles**

The Debtor has provided the Examiner with evidence that title to four additional vehicles is in the name of Piano Man, Inc. These vehicles are comprised of a Ford 350, a Chevrolet Silverado pickup truck, a Saturn and a 1999 GMC (the "Piano Man Vehicles"). The Examiner has been unable to verify the Debtor's allegation that the funds used to purchase, maintain and pay any debt service on the Piano Man Vehicles was generated by the Piano Man.

The Debtor also provided the Examiner with evidence that a 2005 Prius and 2001 Chevrolet Suburban are titled to his wife.

**The Debtor should have provided more accurate values for the Originally Scheduled Vehicles. There is no reason the Debtor could not have listed the fair market values of the Undisclosed Vehicles in his Amended Schedule B. There appears to have been no legitimate basis for the Debtor's contention that the NH Vehicles are assets of the Piano Man and not his personal assets and therefore property of the bankruptcy estate. The NH Vehicles should have been listed as the Debtor's assets in his Original Schedules and they should be deemed to be owned 100% by the Debtor for all purposes.**

### **C. Furniture**

In response to Question 4 of Schedule B of the Debtor's bankruptcy petition, the Debtor responded that he and his wife jointly own "household goods and furnishings, including audio, video and computer equipment" and that his interest in these assets had a value of \$1,000. A creditor advised the United States Trustee in December, 2009 that the Debtor actually owned a very substantial amount of furniture that was being stored in two of his commercial properties.

In response to questioning by the Examiner, the Debtor indicated that when the Piano Man sold pianos it often did so by exchanging the new piano for the buyer's existing piano as

well as various pieces of the buyer's furniture. The Debtor advised the Examiner that as a result of these types of transactions, the Piano Man owns approximately two hundred fifty pieces of furniture which are stored at 22 Felton Street and 91 Felton Street in Waltham (the "Furniture"). The Debtor indicated that none of his funds were ever used to purchase any of the Furniture.

The Examiner conducted a site visit at both 22 Felton Street and 91 Felton Street where he observed that there were in fact approximately two hundred fifty pieces of furniture, the vast majority of which the Examiner would categorize as "used furniture", at best, as opposed to antiques with any real value. Based on the Examiner's experience he believes that the Furniture as a whole has a value of no more than \$5,000 and that many pieces are in such disrepair that they have no value at all. Given the Examiner's observations he determined that the cost of employing an appraiser was not justified.

**While the Examiner has not confirmed that the Debtor's funds were never used to purchase any of the Furniture, the Debtor's contention concerning the manner in which the Furniture was purchased seems to be credible. Given the value of the Furniture the Examiner did not pursue the ownership issue any further.<sup>8</sup>**

#### **D. Litigation**

Allegations have been made before this Court both orally and in certain pleadings that the Debtor has a propensity to bring and prosecute frivolous litigation. In response to Question No. 21 of Schedule B of the Debtor's bankruptcy petition, the Debtor listed a total of four parties against whom he feels he has at least "potential" claims. The four claims are comprised of claims against Rockland Trust Company (the "Rockland Trust Claim"), Bowdith & Dewey LLP, Rucci, Bardaro & Barrett, P.C. and John Johnson. When the Debtor filed his Amended Schedule

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<sup>8</sup> Although the Examiner is of the opinion that there is limited value in the Furniture, the fact that the Piano Man has paid very little rent for the storage of the Furniture at the Debtor's real estate located at 22 Felton Street and 91 Felton Street in Waltham, is an issue (See Section IV(F)(iii) of this Report).

B he added Fine Finish to this list. When the Examiner asked the Debtor whether there were any other claims the Debtor could bring against other parties, the Debtor responded “I believe there are, I stay up at night thinking about claims I could bring”. The Debtor declined to name any other potential claims and indicated that he has not contacted any attorneys in connection with representation concerning any additional claims. The Debtor did tell the Examiner on more than one occasion that he believes he has been poorly represented by approximately ten lawyers and he might have claims against at least some of them.

**i. Rockland Trust Company**

On August 17, 2009, the Debtor filed a complaint with the Middlesex Superior Court against Rockland Trust Company (“Rockland”). In the Complaint the Debtor seeks recovery from Rockland based on the theories of fraud in the inducement, violation of Massachusetts General Law, Chapter 93A, interference with advantageous business relationships and unjust enrichment in connection with the three loans he had taken out from Rockland’s predecessor, Chart Bank. In the Complaint the Debtor alleges that he entered into each of the loans, and kept his loans, with Chart Bank and its successors based on promises made by bank employees that the bank would send the Debtor “business in the form of real estate closings.” The Complaint also alleges that Rockland is liable to the Debtor due to its: (a) failure to advance \$80,000 from the third of the three loans and (b) the bank’s failure to release additional collateral given for the last two loans in the form of second mortgages on other properties.

The Examiner notes that on June 7, 2010 the Debtor filed his Second Motion to Extend the Exclusive Periods for Filing and Soliciting Votes for a Plan (Document No. 173) which indicates that “the Debtor believes [the claims against Rockland Trust] will materially impact his ability to successfully propound a plan or reorganization” and on June 14, 2010 the Debtor filed his Reply to the Opposition of Rockland Trust Company to Second Motion by Debtor for

Extension of Exclusivity (Document No. 201) in which the Debtor states that he believes the Rockland Claim “has substantial value and will provide further support for his plan.”

On June 16, 2010, this Court entered an Order approving the Debtor’s employment of Attorney Stephen R. Follansbee as Special Counsel in connection with the Rockland Trust Claim. The Application to Employ Special Counsel does not indicate why it was filed six months after the Petition Date. The Examiner has had lengthy conversations with Attorney Follansbee and the Debtor as well as Attorneys David Reier and Nicholas Nesgos who represent Rockland in connection with the Rockland Trust Claim. The Debtor’s special counsel has indicated that he has done very little since being appointed other than an attempt to compile the case file from the Debtor’s previous attorneys. The Examiner has also reviewed all relevant pleadings in the Rockland Trust litigation.

**a. Promise of Business**

The promise by Chart Bank to send business to the Debtor was allegedly made prior to the first loan which was extended on April 28, 1999 (the “First Loan”). Although the Complaint indicates that Chart Bank never sent any real estate closings to the Debtor after the First Loan<sup>9</sup>, two and a half years later on December 14, 2001, after allegedly being promised that Chart Bank would send him real estate closings brought to the bank by a broker whom the Debtor introduced to the Bank, the Debtor entered into the second loan transaction with Chart Bank. Although the complaint indicates that the Debtor still did not receive any of the alleged promised business from Chart Bank, seven months later, on July 22, 2002, the Debtor entered into a third mortgage transaction with the Bank. After entering into this third transaction with Chart Bank the Complaint alleges that the Debtor was again promised first by employees of Chart Bank and then

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<sup>9</sup> During questioning by the Examiner the Debtor contradicted this statement in the Complaint and said that a few closings were sent to him.

by employees of Benjamin Franklin Bank, which had merged with Chart Bank, that business would be sent to the Debtor. The Complaint alleges that no business was ever sent his way.

**b. Failure to Advance**

The parties do not dispute the fact that although the promissory note evidencing the third loan is in the amount of \$700,000, only \$620,000 was advanced. The parties also agree that the only documents concerning the method by which the \$80,000 was to be distributed was a commitment letter which states “\$80,000 for rehab (hold until construction verified)” and the HUD Financing Statement which indicates that only \$620,000 of the \$700,000 loan amount was being advanced. Rockland Trust’s attorney advised the Examiner that the arrangement was that upon completion of certain work to be done at 22 Felton Street, the Debtor needed to present evidence to Chart Bank that the work had been completed and after an inspection done by Chart Bank funds would be disbursed. According to Rockland, the Debtor made one request that funds be disbursed and after being told that he needed to present evidence of this fact, the Debtor never requested a disbursement again. The Debtor advised the Examiner that the \$80,000 holdback was a “placebo” and that the understanding was it would be released after he had been paying the loan for a few months. When asked what, if any, documents he had provided to Chart Bank concerning repair work the Debtor said he never presented any documents to the bank.

**c. Release of Collateral**

The second loan extended by Chart Bank to the Debtor was secured by the Debtor’s real estate located at 91 Felton Street and 32 Dartmouth Street both in Waltham, Massachusetts. The third loan extended by Chart Bank to the Debtor was secured by mortgages on 22 Felton Street and 45 South Street also both in Waltham, Massachusetts. Both parties agree that there is no documentation evidencing an agreement by the Bank to release any collateral. The Debtor alleges that Chart Bank agreed to release the mortgage on 32 Dartmouth Street when the Debtor



obtained tenants for 91 Felton Street and it agreed to release the mortgage on 45 South Street when the Debtor obtained tenants for 22 Felton Street. Rockland indicates there was never an agreement to release collateral.

**d. The Motion for Preliminary Injunction**

On or about June 2009, Rockland commenced foreclosure proceedings on the five properties secured by the three loans. On December 4, 2009, the Debtor filed a Motion for Issuance of a Preliminary Injunction (the "Preliminary Injunction Motion") enjoining Rockland Trust from proceeding with its foreclosure sales. In connection with the Preliminary Injunction Motion, Rockland Trust submitted to the Middlesex Superior Court affidavits of John Mathews, John Sergi and Rose Buckley, who deny ever making any commitment to the Debtor concerning Chart Bank providing him with any business. On December 9, 2009, Judge Garry V. Inge of the Middlesex Superior Court, after having reviewed the Complaint and lengthy memoranda submitted by both the Debtor and Rockland and after hearing oral argument from both parties, denied the Preliminary Injunction Motion finding that there was "an insufficient showing of likelihood of success on the merits". This Chapter 11 case was filed the following day.

**Given the current status of the record in connection with the Rockland Trust Claim and with the understanding that discovery has not been completed and dispositive motions been filed or ruled upon, it is the Examiner's view based on all of the above that the Rockland Trust Claim has little or no value to the bankruptcy estate and that given the timing of all of the relevant events concerning the Rockland loans through the filing of the State Court Complaint, the State Court Complaint was filed merely for the purpose of delaying the foreclosures and in the hope that Rockland may be willing to make some concessions to avoid the costs of litigation.**

**ii. Bowditch & Dewey**

The Debtor has yet to file a Complaint against Bowditch & Dewey. According to the Debtor he hired Bowditch in September of 2009 to take over as his counsel in the Rockland Trust litigation from his original counsel Michael Gillis. The Debtor indicated that he hired Bowditch & Dewey in part because they promised him that they could arrange the refinancing of some of his outstanding loans through the firm's various bank contacts. The Debtor claims that notwithstanding this promise Bowditch & Dewey did not arrange any refinancing for him and that they generally ignored the Rockland Claim and when they filed the Motion for a Preliminary Injunction, which would have enjoined Rockland from proceeding with its scheduled foreclosure sales, Bowditch & Dewey's negligent prosecution of that Motion resulted in the denial of the Motion on December 7, 2009. The Debtor also alleges liability on behalf of Bowditch & Dewey due to the fact that immediately upon the issuance of the preliminary injunction, Bowditch & Dewey indicated that they could no longer represent the Debtor because of a conflict of interest which required the Debtor to obtain new counsel for the filing of his bankruptcy petition which occurred the following day. The Debtor feels that if Bowditch & Dewey truly had a conflict of interest he should have been advised of that fact before they agreed to act as his counsel.

**The Examiner has not undertaken an expansive investigation of this claim since litigation is only contemplated and because attorney-client privilege issues would likely limit information that Bowditch & Dewey would be willing to give to the Examiner. It is, however, the Examiner's view that if this litigation were brought it is unlikely that the Debtor would recover a judgment and if he did it is unlikely that the judgment would be in a substantial amount.**

**iii. Rucci, Bardaro & Barrett, P.C.**

The Debtor has not commenced any action against Rucci, Bardaro & Barrett (the "Rucci Firm"), his former certified public accountant. The Debtor indicated that he had paid Rucci Firm a total of \$28,000 when he hired them in July of 2009. The Debtor indicates that the Rucci Firm was hired to obtain refinancing and also to prepare and file the Debtor's 2007 and 2008 tax returns. The Debtor indicates that he only spent four hours with people at the Rucci Firm and that the tax returns were never filed. The Examiner has confirmed that Verdolino & Lowey prepared and filed the Debtor's 2007 and 2008 tax returns.

The Examiner has not spent a considerable time investigating this possible claim given that any recovery likely would not exceed the \$28,000.00 paid by the Debtor to the Rucci Firm.

**iv. John Johnson**

John Johnson was an attorney of the Debtor who was later disbarred. The Debtor has indicated that he will not be pursuing a claim against Mr. Johnson.

**v. Wells Fargo Bank**

The Debtor had filed a Complaint against Wells Fargo Bank for wrongful foreclosure. The foreclosure never took place and the matter is not now being pursued.

**vi. Fine Finish**

This claim is for unpaid rent and property damage from a tenant who vacated the Debtor's property located at 91 Felton Street, Waltham. The Debtor indicated that Fine Finish moved to a new location and was still in business. The amount sought by the Debtor is \$13,000.00. The Debtor indicated that Attorney Arthur Garrity was handling this and other matters. The Examiner notes that the Debtor has not sought to employ Attorney Garrity as special counsel in this bankruptcy case. When questioned on this issue, the Debtor told the Examiner that Attorney Garrity was actually representing the Debtor in two matters and he is representing the Piano Man

in another case. The Debtor claims that, subsequent to the Petition Date, Attorney Garrity has been paid for legal services only by Piano Man.

#### **E. The Piano Man**

The Debtor owns 100% of the outstanding stock in Piano Man. Piano Man's business is run out of 721 Main Street, Waltham, Massachusetts, a commercial property owned by the Debtor. The Examiner had asked the Debtor to produce financial statements, balance sheets, tax returns and other documents that would assist the Examiner in determining the value of the Piano Man business and determine its current financial condition. The Debtor indicated that none of the requested documents were available.

According to a search of the records of the Office of the Massachusetts Secretary of State, the only perfected secured claim against assets of Piano Man is held by the Debtor himself. When questioned about this issue, the Debtor was surprised that a UCCI statement had been filed in his name against Piano Man. He indicated that while he had put money into the business he had not loaned the business any money. He noted that the UCCI had been filed on his behalf by Carroll Lowenstein.

In addition to owning pianos, Piano Man also owns a substantial amount of used furniture and several motor vehicles. According to the Debtor, Piano Man has no debt.

#### **i. Inventory**

The Examiner believes that the assets of Piano Man are comprised of its inventory, motor vehicles and goodwill. During his site inspections, the Examiner observed a substantial inventory of new pianos as well as a substantial amount of older pianos in disrepair and many pianos in pieces. Based on his experience the Examiner believes that if the inventory of the Piano Man were to be liquidated the substantial amount of inventory that is literally in pieces

would have absolutely no value. However, the Examiner estimates that the pianos owned by the Piano Man would bring in excess of \$100,000.

## **ii. Vehicles**

The Debtor has provided the Examiner with evidence that title to four vehicles are in the name of Piano Man, Inc. These vehicles are comprised of a Ford 350, a Chevrolet Silverado pickup truck, a Saturn and a 1999 GMC (the "Piano Man Vehicles"). According to Kelly Blue Book the Piano Man Vehicles have a total "trade in" value of approximately \$12,825.00. None of the Piano Man Vehicles are encumbered by any lien or security interest.

## **iii. Rent**

The Debtor was not able to produce any leases between the Piano Man and the Debtor. According to documents provided by the Debtor to the Examiner, Piano Man is supposed to pay the Debtor rent in the amount of \$2,500 a month for the retail space located at 719 Main Street and \$1,500 a month for the storage spaces located at 22 Felton Street in Waltham and 91 Felton Street in Waltham. According to the Debtor's Monthly Operating Reports, a total of \$6,500.00 in rent has been paid during the first seven months of this case.<sup>10</sup> The Examiner also was given two printouts from the Debtor's computer which seemed to indicate that prior to the Petition Date a substantial amount of rent that was due from Piano Man was never paid. When asked to explain what these documents meant neither Ms. Pirozzi or the Debtor could do so. The Debtor merely summed up the situation by saying that "when the Piano Man could pay something towards rent it did".

## **iv. Sales Taxes**

As noted in Section V(A) of this Report the Massachusetts Department of Revenue has

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<sup>10</sup> As discussed in Section IV(F)(iii) of this Report, while a mere \$6,500.00 has been paid in rent, during the same period the Debtor loaned Piano Man \$2,030.00

asserted a priority claim against the Debtor as a responsible party for nonpayment of sales taxes by Piano Man. When asked about the payment of sales taxes by Piano Man after the Petition Date, the Debtor responded through Attorney Ruttenberg that none had been paid but he believes less than \$2,000.00 is due. Since the Examiner was not provided with any financial records for Piano Man he cannot confirm this amount.

#### **F. Additional Assets**

In response to Question 13 of Schedule B of the Debtor's bankruptcy petition, the Debtor indicated that he had an interest in two Ameritrade accounts. He indicated that one of these accounts was "held jointly with non-debtor spouse" and had a value of \$80,000.00 (the "Joint Account"). He also indicated that he individually owned an Ameritrade account with a value of \$50,000.00 (the "Individual Ameritrade Account"). When asked by the Examiner to produce monthly statements for these accounts for the one year period prior to the Petition Date, the Debtor only produced four statements from the Individual Ameritrade Account and five statements from the Joint Account and he indicated these were the only statements he had available. The June 2010 statement for the Individual Ameritrade Account (the most recent statement provided) shows a balance of \$45,310.10 as of June 30, 2010 and the April 2010 statement for the Joint Account (the most recent statement provided) shows a balance of \$152,390.55 as of April 30, 2010. Based on the statements produced, the only unexplained disbursement was a \$20,000 withdrawal in December, 2009 from the Joint Account.

#### **V. Claims**

As of the date of this Report a total of seventy eight Proofs of Claims have been filed in this case. All but two appear to have been filed prior to the June 10, 2010 bar date set by this Court. Of the claims listed on the Claims Register a total of thirty claims assert secured status against

one or more of the Debtor's real properties.<sup>11</sup> Two are priority tax claims, four are priority wage claims and thirty seven are general unsecured claims. The Examiner has done a cursory review of the Proofs of Claims and discussed many of them with the Debtor.

#### **A. Priority Tax Claims**

Claim No. 4 is a priority tax claim filed by the Internal Revenue Service in the amount of \$176,662.50 which represents income taxes allegedly due from the Debtor for the years 2007 and 2008, the years for which the Debtor had not filed tax returns. After discussing the Internal Revenue Service Proof of Claim with the Debtor and with the Debtor's accountants at Verdolino & Lowey, the Examiner understands that Verdolino & Lowey recently prepared, and the Debtor executed and forwarded to the Internal Revenue Service, tax returns for 2007 and 2008 which indicate that there are no taxes due for these years. Assuming that the Internal Revenue Service does not audit these returns it would appear that Claim No. 4 will eventually be withdrawn.

As for calendar 2009, Verdolino & Lowey has indicated that they are in the process of preparing those tax returns and feel that it is likely that when those returns are completed they will indicate that no tax is due.

On January 27, 2010, the Massachusetts Department of Revenue filed a Proof of Claim which has been designated as Claim No. 19 on the Claims Register in the total amount of \$238,650.43, the majority of which is asserted as a priority claim. These taxes are made up of 2007 and 2008 income taxes and sales taxes due from the Piano Man for which the Debtor is deemed a responsible person. On August 12, 2010, after having received income tax returns for the years 2007 and 2008 that were prepared by Verdolino & Lowey, the Massachusetts Department of Revenue filed an amended proof of claim which eliminated the income tax

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<sup>11</sup> This includes Claim No. 40 filed by New England Phoenix Co., Inc., successor to Sovereign Bank in the amount of \$130,355.00 which is secured by a real estate attachment on all of the Debtor's real estate in Middlesex County. The Examiner also notes that Sovereign Bank filed a UCCI statement against the Debtor (the only UCCI on record against the Debtor) in which it asserts a security interest against the Debtor.

portion of the claim but continued to assert a claim in the amount of \$29,680.43 for unpaid Piano Man sales taxes during 2007 and 2008<sup>12</sup> Verdolino & Lowey has indicated that they are in the process of preparing the Piano Man's 2009 income taxes and that they feel that it is likely that there will be little or no tax due for that year.

### **B. Non Tax Priority Claims**

A total of four non tax priority claims were filed for unpaid wages which total \$49,673.83.

### **C. General Unsecured Claims**

Amended Schedule F to the Debtor's bankruptcy petition lists a total of one hundred fourteen creditors. The Debtor indicated that of these creditors he disputed the claims of ninety of these creditors and he scheduled the amount due fifty-nine of the creditors as "unknown".

A total of thirty-seven general unsecured claims have been filed in this case in the total amount of \$549,618.27. The Debtor has indicated that he will likely object to many of these claims. Although, it is certainly likely that the final amount of allowed unsecured claims will be significantly less than the \$549,618.27 filed, at this point the Examiner has not expended the considerable amount of time necessary to make an educated guess as to what that amount ultimately will be.

## **VI. Post Petition Operation of Real Estate Business**

The Debtor's business involves the running of a total of twenty nine rental properties including single-family houses, residential condominiums, two-family houses, four-family houses and three commercial buildings. The Debtor's real estate business, as well as the Piano Man business, is run from offices located in the Debtor's building at 721 Main Street, Waltham, Massachusetts.

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<sup>12</sup> Verdolino & Lowey have indicated they are not preparing the Piano Man's sale tax returns. The \$29,680.43 claim is asserted as a priority claim in the amount of \$23,177.03 and general unsecured claim in the amount of \$6,503.40.



The Debtor's business is run through his debtor-in-possession account at Citizens Bank. With the exception of rents and expenses in connection with the Edgewater Park property, the Debtor and Ms. Pirozzi indicate that all rent checks and all expenses are paid through this account. The Debtor is current with his monthly operating reports which are being prepared by his accountants at Verdolino & Lowey. According to the most recent monthly operating report for the month of June, the Debtor has \$85,058.00.

Currently there are three people who provide significant assistance to the Debtor in running his business: Crystal Pirozzi, Christopher Lewis and Tony Chisari.

**A. Employees/Independent Contractors**

**i. Crystal Pirozzi**

On August 9, 2010, the Examiner interviewed Crystal Pirozzi at the business premises. Ms. Pirozzi indicated that although her primary job was assisting the Debtor in connection with the running of his real estate business, she also helped out with the Piano Man business. She has worked for the Debtor since approximately 2007. Her duties include collecting and depositing rent checks, paying bills and handling the various issues that are brought to her attention concerning the properties. The Debtor pays her \$12.00 an hour and she indicated that for the most part she works full-time. The Examiner's impression of Ms. Pirozzi is that although she seems to be a bit overwhelmed by the amount of work required of her, she is a very capable person and she seems to be generally on top of the business operation (See however discussion of security deposit issues in Section VI(B) of this Report).

**ii. Tony Chisari**

Tony Chisari is a contractor/handyman. The Debtor indicated that Mr. Chisari is an independent contractor although the Debtor believes that Mr. Chisari works primarily on the Debtor's properties. According to Ms. Pirozzi all of the tenants are given Mr. Chisari's name and telephone number so that they can call him directly if any problems arise so that Mr. Chisari and the tenant can coordinate a time for any repairs to be done. On a weekly basis Mr. Chisari provides the Debtor with an invoice for services provided. Ms. Pirozzi indicated that while tenants are asked to call Mr. Chisari first, often times tenants who have issues still will call the Debtor's office directly. Mr. Chisari has worked for the Debtor for approximately one year.

**iii. Christopher Lewis**

Mr. Lewis has been assisting the Debtor for the last several months with various aspects of the real estate business as well as helping him in connection with the bankruptcy case. The Examiner met with Mr. Lewis on August 9, 2010. The Examiner's impression of Mr. Lewis was that he seemed to have a handle on many aspects on the Debtor's business and appeared to be helpful to the Debtor. Mr. Lewis indicated to the Examiner that the Debtor had yet to pay him any compensation. The Debtor later advised the Examiner that he was paying for Mr. Lewis' hotel room at a rate of approximately \$50.00 a night and providing Mr. Lewis with spending money, a car and storage space for Mr. Lewis personal property at 91 Felton Street.

An internet search concerning Mr. Lewis indicates that Mr. Lewis "pleaded nolo contendere in 1987 to various charges relating to a scheme to defraud investors. He was sentenced to a term of imprisonment of from nine to ten years, with the sentence suspended during a ten-year probationary period. In 1985, he was convicted of larceny in connection with a similar scheme. In 1997, a Superior Court judge found [Mr. Lewis] had violated his probation and sentenced him to serve the original term". See Christopher Barden Lewis v. Commonwealth of Massachusetts,

429 Mass. 1007 (1999). In connection with the 1985 conviction, Mr. Lewis was “sentenced to serve a term at the Massachusetts Correctional Institutional at Cedar Junction of not less than four and one-half years nor more than five years”. See Commonwealth v. Lewis, 48 Mass App Ct. 343 (1999).

### **B. Security Deposits**

When asked whether any of the Debtor’s tenants had delivered to him security deposits at the time of the commencement of their tenancy, Ms. Pirozzi indicated that she was not sure but that “there might be two or three”. She indicated that there was a “security deposit account” but that no security deposits were in it. Both she and the Debtor separately indicated that they would not tend to take security deposits because of the several requirements under Massachusetts law that are imposed on a landlord. The Debtor indicated that he did not think that any of his tenants had delivered security deposits but he was not 100% sure. When the Examiner asked the Debtor about the allegation made by Joanne DeProfio in her adversary proceeding (Adversary Proceeding No. 10-01077) and Joyce Cicero in her adversary proceeding (Adversary Proceeding No. 10-01078), that they had delivered a security deposit to the Debtor, the Debtor indicated that they had delivered last month’s rent checks at the beginning of their tenancy not security deposits.

Massachusetts General Laws c. 186 Section 3 has many requirements concerning the holding and return of security deposits given by residential tenants. The Debtor appears to have failed to comply with this statute in the past and may be doing so now.

### C. Habitability

There have been many habitability problems at the Debtor's residential properties.<sup>13</sup> These include backed-up septic systems, failed heating units, lack of heating oil, leaking roofs, leaking sinks, broken toilets and failed inspections by town Housing Authorities. Many of these issues are the subject of three of the adversary proceedings filed by former tenants of the Debtor (See *Joyce Cicero v. Robert Lupo*, Adversary Proceeding No. 10-01078 (allegations of broken toilet, inadequate stove, leaking sink, broken door and lack of hot water, in addition to the issues with failure by the Debtor to timely repair or cure the problems), *Joanne De Profio v. Robert N. Lupo*, Adversary Proceeding No. 10-01077 (allegations of inoperable oven and smoke detector) and *Myesha Vanover v. Robert N. Lupo* Adversary Proceeding No. 10-01075 (allegations of termination of electrical service, failure to provide oil, septic system backup in the cellar)).

On August 9, 2010, the Examiner inspected the interiors of several of the Debtor's residential buildings which were selected by the Examiner. The Examiner also inspected the exteriors of several other residential buildings. During these site visits, and subsequent to the visits, the Examiner spoke privately with several of the Debtor's tenants. Based on these inspections and tenant interviews the Examiner feels that while the condition of some of the buildings could certainly be better, at present there are few issues concerning habitability in the Debtor's residential buildings<sup>14</sup>. The Examiner did note the presence of a blue tarp on a portion of the roof of the house located at 700 Boston Post Road which the Debtor indicates has prevented the continuing leak in that single-family house and the presence of damp ceilings at

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<sup>13</sup> In addition to the issues at the Debtor's residential properties, at least one commercial tenant has complained about post-petition neglect by the Debtor (Attached hereto as Exhibit D is a letter dated January 5, 2010 from an attorney for Keltran Corporation to the Debtor).

<sup>14</sup> The Examiner is not an expert concerning the State Building Code or the State Sanitary Code. His conclusions are based only on what he saw and on his interviews with a few of the Debtor's tenants

the house located at 213 Boston Post Road, Wayland which the tenant indicated has a roof which leaks occasionally in heavy rainstorms.

The Examiner has also contacted the Housing Authorities which oversee rentals in several of the Debtor's residential properties. A representative of the Waltham Housing Authority which supervises a significant number of the Debtor's Section 8 tenants advised the Examiner that while there had been problems in the past he was unaware of any issues or problems over the last six months. He did indicate that the Debtor's ability to rent to new Section 8 tenants had been suspended eighteen months ago, however, it was reinstated after a year and there have been no issues since then. The Boston Housing Authority told the Examiner that the Debtor's real estate at 32A Dartmouth Street in Waltham failed its annual inspection and that the Debtor has until September 1, 2010 to remedy the issues. The Housing Authorities in the Towns of Arlington and Newton have advised the Examiner that they have not had any issues with the Section 8 tenancies which they supervised for many months.

#### **D. Loans to Piano Man**

The Examiner notes that the Debtor's Monthly Operating Reports indicate that during the first seven months of this case the Debtor has made the following post petition loans to Piano Man totaling \$2,030.

<b><u>Date</u></b>	<b><u>Loan Amount</u></b>
April 13, 2010	\$750.00
May 7, 2010	\$200.00
May 11, 2010	\$500.00
May 20, 2010	\$580.00

**E. Stop Work Order - 45 South Street, Waltham**

During the Examiner's investigation he became aware of the fact that a stop work order had been posted on the Debtor's two-family house located at 45 South Street, Waltham, Massachusetts. The Examiner conducted an interior inspection of this house and discussed the matter with the Debtor and building inspector for the Town of Waltham. Based on this investigation, the Examiner learned that the Debtor had Mr. Chisari conduct substantial demolition work on the second floor of the South Street building in preparation for combining the second floor and the attic into one unit. Apparently Mr. Chisari had informed the building inspector that the work was planned but he had never obtained a permit to do the work. When the building inspector noticed the work was ongoing he posted the stop work order. After the stop work order was posted, Mr. Chisari or another contractor on behalf of the Debtor, attempted to get the proper permit on several occasions but each time was denied for failure to provide a completed application. On August 9, 2010, the date of the Examiner's inspection of the South Street property, the Debtor advised the Examiner that a proper permit was about to be issued and on August 13, 2010, the Examiner was provided with a copy of the permit that had been issued that day.

**Both the Debtor and Mr. Chisari should have known that a permit from the Waltham Building Inspector would be required to conduct the extensive demolition work undertaken by Mr. Chisari. There is no reason that such a permit could not have been obtained prior to the commencement of work as opposed to several weeks after the building inspector discovered the ongoing work.**

**F. Sale of Motor Vehicle**

One of the motor vehicles which was not included in the Original Schedules but was later included in the Debtor's Amended Schedule B was a 1998 Ford Crown Victoria. When

questioned about this vehicle the Debtor admitted that the vehicle had always been titled in his name but said that he did not include the vehicle in his Original Schedules because his mother had given him the money to buy it for her. The Debtor's mother died in 2007. When asked about the status of the vehicle the Debtor advised the Examiner that at his wife's request he had sold the vehicle to a friend of his wife's subsequent to the Petition Date without court approval. The Debtor could not remember the exact amount of money he received for the sale of this vehicle and when asked whether he received what he considered fair market value he said "I received whatever they offered".<sup>15</sup>

The Debtor indicated that he had not told his then counsel, Hanify & King, about the sale of this vehicle.

#### **G. Payment to Gillis & Bikofsky**

On March 16, 2010, this Court entered an Order allowing the Application by Debtor and Debtor-In-Possession to Retain Michael Gillis and Gillis & Bikofsky P.C. as Special Counsel to deal with eviction matters (Document No. 71). Paragraph 11 of the Application to Employ is the only place the manner of payment is discussed. It states:

11. All compensation and expense reimbursement shall remain subject to allowance by this Court upon appropriate application pursuant to Section 330 and 331 of the Bankruptcy Code and any other compensation procedures established by this Court.

The Examiner notes that in the Schedule of Disbursements section of the Debtor's May, 2010 Monthly Operating Report there is an item that indicates the Debtor paid Gillis & Bikofsky, P.C. the amount of \$1,500. No court approval for this payment was ever sought.

#### **H. Wage Compliance**

Ms. Jacobs had indicated in pleadings and to the Examiner that several wage complaints had

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<sup>15</sup> The day after the Debtor made this statement to the Examiner, Attorney Ruttenberg advised the Examiner that the Debtor thought he sold the vehicle for either \$2,600 or \$2,800.

been filed against the Debtor with the Massachusetts Attorney General's office. The Examiner has been advised by the Attorney General's Office that a total of seven complaints were filed against the Debtor in his capacity as the owner of Piano Man and that restitution was ordered for several of the claimants. The Examiner was also advised that all of these files were closed as of April 5, 2010 as a result of the bankruptcy filing.

### **I. Insurance**

At a recent hearing there was an issue raised as to whether the Debtor was current on his insurance. The Examiner understands that the Debtor is in fact current on insurance for all of his real estate and all of his vehicles

### **VII.**

### **Conclusion**

Although many parties have asked the Examiner to make a recommendation concerning the future of this case, such a step seems to be beyond the dictates of § 1106(a)(4) of the Bankruptcy Code. Rather the Examiner merely presents the results of his investigation in this Report in the hope that it will be of some benefit to the Court and the parties in interest in this case.

Respectfully submitted,

/s/ Mark G. DeGiacomo

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Dated: August 16, 2010



**EXHIBIT A**

Address	City	Owner	Property Description	Total # of Units	# of Rented Units	Estimated Monthly Rents	Estimated Monthly Expenses	Net Income Before Debt Service	Lender	Debt Service per Loan Docs	Purchase Date	Estimated Tax Basis	Estimated Value per R. Lupo	Zillow Estimated Value	2010 Assessed Value	Outstanding Mortgage @ 12/1/09 - Per Schedules	Outstanding Mortgage @ 12/1/09 - Per Claims
48 South	Waltham, MA	Robert Lupo	2 family - fully occupied	2	2	3,350	2,057	1,293	Rockland Trust as Collateral for 22 Felton		10/27/1976	0	450,000	460,500	421,100		
22 Felton	Waltham, MA	Robert Lupo (trust revoked on)	Building (storage facility for the vacancy ad	2	1	1,500	2,044	1,544	Rockland Trust	5,161	7/15/2002	538,753	900,000	705,600	542,000	652,646	
91 Felton	Waltham, MA	Robert Lupo (trust revoked on)	Building (5 unoccupied)	3	1	4,886	4,007	879	Rockland Trust	5,939	12/18/2001	597,106	825,000	433,200	649,000	780,396	
719-723 Main	Waltham, MA	Robert Lupo (trust revoked on)	2 family - fully occupied	10	4	7,911	4,359	3,552	Rockland Trust as Collateral for 91 Felton	4,228	2/4/1982	247,288	1,050,000		944,900	396,000	450,509
30-32 Dartmouth	Waltham, MA	Robert Lupo	Single family - occupied	2	2	3,524	1,045	2,479	Bank of America - was Countrywide		2/2/1976	21,749	425,000	487,500	421,800		
126 Florence	Waltham, MA	Robert Lupo	Condo - occupied	1	1	2,105	750	1,355	444 Bank of America	1,846	5/1/1983	1,218	550,000	440,000	377,800	283,000	not yet filed
21 Davis, C11	Acton, MA	Robert Lupo	Condo - occupied	1	1	1,025	581	544	507 Bank of America	594	6/1/1980	20,672	150,000	141,800	141,800	51,000	not yet filed
17 Davis, A15	Acton, MA	Robert Lupo	Condo - occupied	1	1	1,200	693	621	529 Bank of America	621	6/1/1980	20,672	150,000	157,100	157,100	53,000	not yet filed
19 Davis, C16	Acton, MA	Robert Lupo	Condo - occupied	1	1	1,200	693	621	500 Bank of America	621	6/1/1980	20,672	150,000	157,100	157,100	53,000	not yet filed
17 Davis, B8	Acton, MA	Robert Lupo	Condo - occupied	1	1	1,100	600	500	500 Bank of America	573	6/1/1980	16,923	150,000	135,000	135,000	48,000	not yet filed
17 Davis, C9	Acton, MA	Robert Lupo	Condo - occupied	1	1	1,100	600	500	500 Bank of America	573	6/1/1980	16,923	150,000	135,000	135,000	48,000	not yet filed
18-20 Vernon	Waltham, MA	Robert Lupo	4 family - 3 occupied, 1 in renovation	4	4	3,575	1,930	1,645	Union Loan Svcs	1,706	10/26/2004	246,826	700,000	500,000	406,900	262,000	288,603
60-62 Orange	Waltham, MA	Robert Lupo	4 family - fully occupied	4	4	4,880	2,448	2,432	AHMSI	3,086	10/25/2005	25,598	650,000	385,000	385,000	394,000	not yet filed
10-12 Nathan	Waltham, MA	Robert Lupo	4 family - fully occupied	4	4	4,768	2,703	2,065	Bayview	1,461	12/12/2005	64,262	650,000	462,000	462,000	244,000	276,400
91-93 Hammond	Waltham, MA	Robert Lupo	4 family - fully occupied	4	4	3,950	1,937	2,013	Suntrust	1,742	10/26/2004	280,776	800,000	634,000	506,400	293,844	293,844
164-166 Washington	Newton, MA	Robert Lupo	2 family - fully occupied	2	2	3,600	1,470	2,130	Suntrust	1,527	10/25/2004	41,344	750,000	580,000	548,500	231,314	231,314
221 Tower	Lincoln, MA	Robert Lupo & Jean Reynolds (DYE)	Single family (daughter's home)	1	1	1,500	912	568	RTN Fed Cred Union	3,046	10/22/2005	644,343	1,000,000	577,500	641,500	554,000	585,590
9 Sky Harbor	Billerica, ME	Robert Lupo & Jean Reynolds (DYE)	Single family	1	1	1,400	626	774	Saco-Biddeford Savings Chase - was Washington Mutual	2,478	6/15/2004	330,308	675,000	550,000	226,000	394,000	400,000
213 Boston Post	Weyland, MA	Robert Lupo	Single family - occupied	1	1	3,250	1,259	1,991	Mutual	2,670	2/27/2004	620,159	700,000	640,000	581,400	545,000	687,959
26-30 School	Waltham, MA	Robert Lupo	4 family - fully occupied	4	4	5,627	1,838	3,789	RTN Fed Cred Union	2,913	10/25/2005	39,295	750,000	430,000	428,300	380,000	371,260
402 Parker	Newton, MA	Robert Lupo & Peter Collins	Single family - occupied	1	1	1,675	1,031	645	Unknown	939	11/1/1984	2,234	350,000	382,500	330,000	109,000	not yet filed
Income Property Totals(Adj to RNL %)						62,289	33,046	29,243		41,380		3,784,827	11,800,000	7,014,750	8,369,200	5,479,599	5,157,085
Revocable Trusts																	
131 Tower	Lincoln, MA	Tower Realty Trust	occupied	1	1	2,900	749	2,151	Countywide	3,243	10/15/2003	115,544	1,000,000	538,000	564,000	472,000	not yet filed
25 Melville Avenue	Newton, MA	25 Melville Avenue Family Trust	Single family - occupied	1	1	1,725	570	1,155	ASC	1,404	10/12/2004	86,792	550,000	366,500	367,800	220,000	not yet filed
236 Linwood	Newtonville, MA	Linwood Family Trust	Single family - occupied	1	1	2,375	687	1,688	ASC	908	3/1/2000	125,653	550,000	401,500	361,900	142,000	139,995
700 Boston Post	Weston, MA	RN Lupo Family Trust	Single family - occupied	1	1	2,100	745	1,355	ASC	1,683	11/1/2004	36,635	750,000	533,500	499,600	263,000	258,434
Rev Trust Income Property Totals						9,100	2,751	6,348		7,238		364,624	2,850,000	1,839,500	1,793,100	1,097,000	398,429
Spendthrift Trusts																	
10 Edgewater	Newton, MA	Lupo Edgewater Realty Trust		1	1	1,600	696	904	None	0	3/17/2007	186,166	500,000	395,500	359,100	0	0
97 Hamilton	Waltham, MA	NKA Realty Trust		1	1	2,300	653	1,647	None	0	3/17/2007	166,219		367,000	368,500	0	0
28-33 Neholden	Mashpee, MA	Lupo Mashpee Realty Trust		0	0		263	(263)	none			0	424,000	424,000	424,000	0	0
29 Myles Standish	Weston, MA	NKA Realty Trust		1	1	3,250	2,485	765	None	0	3/17/2007	824,448	999,000	999,000	1,054,900	0	0
Totals						7,150	4,097	3,053		0		1,776,834	924,000	2,185,500	2,206,500	0	0
Trust Held Income Property Totals(Adj to RNL %)						4,376	2,397	1,978		0		681,600	712,000	1,290,500	1,262,900	0	0
Total Income Property Totals (Adjusted to RNL % Holdings)						75,764	38,194	37,570		48,619		4,530,950	15,362,000	10,144,750	11,465,100	5,676,699	5,555,519

Address	City	Owner	Property Description	Total # of Units	# of Rented Units	Estimated Monthly Rents	Estimated Monthly Expenses	Net Income Before Debt Service	Lender	Debt Service per Loan Docs	Purchase Date	Estimated Tax Basis	Estimated Value per R. Lupo	Zillow Estimated Value	2010 Assessed Value	Outstanding Mortgage @ 12/1/09 - Per Schedules	Outstanding Mortgage @ 12/1/09 - Per Claims
89 Sudbury	Weston, MA	Robert Lupo & Jean Reynolds (Tb/E)	Personal Residence			0	2,304	(2,304)	RTN Fed Cred Union	2,608		620,000	1,700,000	1,636,000	1,800,900	481,500	567,976
Winnakee Extension	Moultonboro, NH		Single family vacation home			0	394	(394)	Meredith Village Savings	446	9/4/1992	25,787	650,000	536,400	561,100	38,000	36,881
						0	2,698	(2,698)		3,055		645,787	2,350,000	2,172,400	2,362,000	499,500	604,857
Overall Total (RNL Holdings & Personal Residence @100%)																	
						75,764	40,892	34,882		81,873		5,476,737	17,712,000	12,317,190	13,827,100	7,076,159	6,160,371

**EXHIBIT B**

Vehicles owned by Robert Lupo<sup>1</sup>

Vehicle	Sch. Value	KBB Trade-In	KBB Private Value	NADA Avg.	Purchase Price (NH)
1997 Toyota 4Runner	\$1,475.00 (o)	\$3,575.00	\$5,215.00	-	-
2003 Cadillac Deville	\$5,200.00 (o)	\$7,650.00	\$9,670.00	-	-
1991 Camaro	\$400.00 (o)	\$1,550.00	\$2,335.00	-	-
1981 BMW 733	\$1,375.00 (o)	-	-	\$4,400.00	\$15,000.00
2003 Toyota Celica <sup>2</sup>	\$4,275.00 (o)	\$8,000.00	\$9,925.00	-	-
2003 Toyota MR2	\$6,300.00 (o)	\$8,525.00	\$10,500.00	-	-
1976 Triumph TRG	\$6,000.00 (o)	-	-	\$12,400.00	-
1985 Oldsmobile Delta88	\$300.00 (o)	-	-	\$3,325.00	-
1984 Datsun 300z	Unknown (a)	-	-	\$4,725.00	\$8,425.00
1982 BMW 628CSi	Unknown (a)	-	-	\$6,200.00	\$16,641.00
1932 Chevy	Unknown (a)	-	-	\$23,000.00	not avail.
1965 Ford Mustang	Unknown (a)	-	-	\$30,625.00	\$13,994.00
1964 Studebaker	Unknown (a)	-	-	\$7,450.00	\$5,660.00
1986 Vixen 21 MH	Unknown (a)	-	-	\$2,261.00	\$11,269.00
1998 Crown Vic	\$1,800 (a)	\$2,425.00	\$3,625.00	-	-

Vehicles owned by Piano Man

Vehicle	KBB Trade-In
2002 Chevy Silverado	\$5,575.00
1999 Ford F350	\$4,650.00
1999 GMC Safari	\$1,750.00
1993 Saturn SW2	\$850.00

<sup>1</sup> Kelly Blue Book ("KBB") was used by the Examiner to calculate the values for the Debtor's vehicles that were manufactured prior to 1991, as KBB does not calculate values of vehicles manufactured prior to 1991. The NADA Guides were used to value all other vehicles. In valuing the vehicles, the Examiner used an estimated mileage of 100,000 miles. For KBB, the Examiner chose the "Good" value to indicate the condition of the vehicle. For NADA, the Examiner used the "Average Retail" value to reflect the condition/value of the vehicle.

<sup>2</sup> The Toyota MR2 is secured by RTN Federal Credit Union by an automobile loan in the amount of \$5,972.09 as indicated by Claim No. 31 on the Claims Register.

**EXHIBIT C**

## THE PIANO MAN, INC.

*Vintage and New Pianos*

6/13/02

I assign my AND ALL INTERESTS  
in following vehicles: to THE PIANO MAN  
INC. 219 MAIN ST. WALTHAM,  
MA. FOR PARKING ADS / FRONT OF STORE  
EVENTS

1 1965 Mustang Conv.  
Maroon

2 1964 STUDEBAKER PLYMOUTH  
GREEN

3 1982 BMW CSI CONV.

4 1984 300ZX NISSAN  
- DATSON CALLAWAY

5 VIEXEN Motor Home -



**EXHIBIT D**



KERSTEIN, COREN & LICHTENSTEIN LLP

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Wellesley, MA 02481

ROBERT ROSENBLUM, Esq.  
*Of Counsel*

TEL: (781) 997-1600  
FAX: (781) 997-1633  
[rosenblum@kcl-law.com](mailto:rosenblum@kcl-law.com)

SENT VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

January 5, 2010

Robert N. Lupo  
721 Main Street  
Waltham, MA 02451

Re: *Lease between Keltron Corporation and Felton Street Realty Trust*  
*Demised Premises: 91 Felton Street, Waltham, Massachusetts*

Dear Mr. Lupo:

I represent Keltron Corporation ("Keltron"). As you know, my client has been trying to contact you for the past two weeks regarding your failure to maintain the premises at 91 Felton Street. During the past two weeks you have breached the lease with Keltron in at least the following instances:

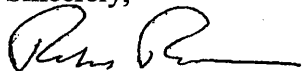
1. Your failure to have the snow plowed required Keltron to hire a snow plow service on December 21, 2009 and again on January 3, 2010 at a cost to Keltron of \$200.00.
2. Last week you failed to have oil delivered. Keltron called you about this several times but you never returned their calls and Keltron was, therefore, required to fill the tank with approximately 875 gallons of oil and to have the heating system reset because it had rundown to zero. The cost to Keltron for the oil and the reset was \$2,447.72.
3. At some point over last weekend, your failure to keep the heat on caused the pipes to burst. This resulted in flooding which has come into Keltron's premises.
4. After the pipes burst the water in the building was shut down on Monday January 4, 2010. Since that time Keltron has not had water and, therefore, has been unable to use the bathroom facilities and has had to bring water into the premises in order to perform Keltron's normal business activities.

By this letter Keltron demands that you meet your obligations as landlord of the

premises. Further, your breach of the lease necessitates that we off-set from our rent the costs we have incurred for carrying out your responsibilities.

Please let us know what you intend to do regarding the above issues and costs.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Rosenblum', with a stylized flourish at the end.

Robert Rosenblum, Esq.

Cc: David Wilbourn  
Andy Lizotte, Esq.  
Eric Bradford, Esq.  
Thomas E. Pontes, Esq.